

EX PARTE MEETING SUMMARY WITH  
THE UNITED STATES COPYRIGHT OFFICE

Docket Number 2020-12

Re: Summary of the November 18, 2020 Ex-Parte Meeting Between the United States

Copyright Office and TuneCore founder and former CEO and Audiam founder and former CEO Jeff Price.

On Wednesday, November 18, 2020, an ex-parte video-conference meeting was conducted by the United States Copyright Office (USCO) with Jeff Price concerning rulemakings in connection with Doc. No. 2020-12.

This summary is submitted on behalf of Jeff Price, the sole attendee of the meeting.

The meeting was chaired on behalf of the USCO delegation by its General Counsel, Regan Smith.

The purpose of the meeting was to discuss and explore the actual logistical workflow process for the digital service providers (DSPs) with their hired agents MRI, HFA and other similar entities and how that could apply to the requirement to provide the individual line-item detail necessary to allow the forthcoming MLC to ensure the entity that earned the accrued but unpaid mechanical royalties would be identified (mapped and matched properly).

The reason for the exploration of this topic came from some ex-parte submissions from DSPs stating that despite supporting the MMA and all of its requirements and working in tandem with the NMPA and other industry entities to shape and push the bill to be passed as law, they could not comply with the very requirements they helped draft and legislate. Specifically, some DSPs stated that they no longer had the necessary and required data to identify what each self-published songwriter and/or music publisher earned. They only had a “fuzzy” dollar figure with no itemized detail to support who earned the mechanical royalties. They indicated this problem is due to them outsourcing the job to calculate mechanical royalties to third party entities such as HFA and MRI and not saving the work they paid for.

Some things to consider. When the DSPs hired HFA, MRI or other third-party entities, they hired them as agents to do work for them. As an example, an entity can hire a CPA or accountant to do their taxes. The entity has to sign the documents, remit payments and keep all records despite outsourcing to a CPA or accountant to do the tax work for them. In addition, the burden to maintain copies of the tax filing is with the entity that hired the CPA or accountant.

Next, the DSPs own(ed) the data and the results of that data that it sent, and received, from the third-party entity. This data is and was their property. If they did not save their own data (the very data they paid to have) then it questions their motives in asking to be forgiven for something they knew they could not do when supporting the passage of the MMA.

In addition, based on the workflow between the DSPs and their third-party agents some or all of the original elements necessary to calculate the mechanicals still exist.

To be more specific, the following is an example of a typical workflow between a DSP and an entity like MRI and/or HFA

- 1) The DSP sends a computer output file to the third-party entity (HFA/MRI etc) that contains a list of the sound recordings distributed to the DSP for licensing of the composition.
- 2) The third-party entity sends a return file back to the DSP indicating what sound recordings were mapped to a composition and if a Notice Of Intent was sent to secure the DSP a license.

- 3) The DSP at the end of each payment cycle sends an output file to the third-party entity that contains an itemized list of each sound recording that streamed in the music service in the applicable time frame with the associated metadata for the sound recording and the stream count for each individual recording. The DSP does not remove sound recordings that do not have the composition licensed.
- 4) The DSP also provides the other necessary inputs to allow the third-party entity to calculate the mechanical royalties (more on that below).
- 5) The third-party entity runs the statements and concludes not only the compounded total amount of mechanicals to be paid to all for the time period, but also how much is owed to each identified publisher and how much is owed in mechanicals for the stream of each individual sound recording. The mechanicals where the publisher is not identified goes into the “accrued but unpaid” category and is carry forward, even if the composition is not licensed.

Therefore, to have none of the data, a DSP must no longer have any of the outputs it sent to the third-party nor any of the return files sent back to the DSP by the third-party.

But assuming for arguments sake that the DSP does not have access to any of its own files, or any of the many return files sent back to it, this still does not preclude the DSPs ability to provide some or all of the necessary itemized back up needed to ensure the proper entities can be paid. There are some ways to re-create the itemized detail for the mechanical royalties.

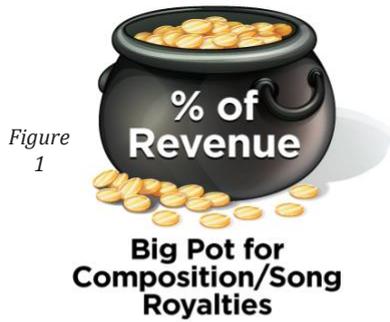
The DSPs calculate and distribute the sound recording royalties themselves in-house. They are not outsourced. To calculate the monthly sound recording statement and make the required monthly sound recording royalty payment the DSPs must know, amongst other things:

- 1) Their monthly revenue
- 2) The number of subscribers for each offering type for the month (i.e. ad supported, premium etc)
- 3) The total number of eligible streams of sound recordings generating royalties in the month broken out by each offering type for the month.
- 4) The exact number of streams of each individual sound recording that generated royalties in the month broken out by each offering type.

With this information and the other needed inputs, the DSP can possibly recreate the missing mechanical statements. To understand this further, here are the steps to calculate the mechanical royalties earned on a DSP for the Composition/Song each month:

**STEP 1:**

**Determine How Much Money Goes Into The “Big Pot” For The “All In” Royalty For The Composition/Song**

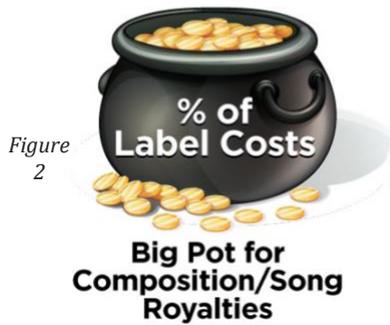


The money that goes into the “big pot” for the “All In” royalty for the Composition/Song is the greater of:

**•Calculation (1):**

A percentage DSP’s monthly Revenue as set by the CRB judges (Figure 1).

As compared to:



**•Calculation (2):**

A percentage of the “Label Costs” as set by the CRB judges (Figure 2).

In the example at the start of this section of the article, the results of the calculations were as follows:

- \$13.30 is the percentage of DSP’s Monthly Revenue.
- \$13.26 is the percentage of the Label Costs.

Therefore \$13.30 is the amount eligible to go into the “big pot” for the “All In” royalty for the Compositions/Songs.

*To have the information for Step 1 the DSP must know the CRB rates for the monthly revenue and for Label Costs for the applicable time frame. The CRB rates are a matter of public record and also remained static for almost 15 years. The DSP must also know its “Label Costs” (the amount paid for sound recordings and other applicable items) which it has via its Sound Recording statements (and possibly in their monthly financial statements).*

**STEP 2:**

**From The “Big Pot” For The “All In” Royalty For The Composition/Song, Determine How Much Of It Is For the Right Of Reproduction (The Mechanical)**

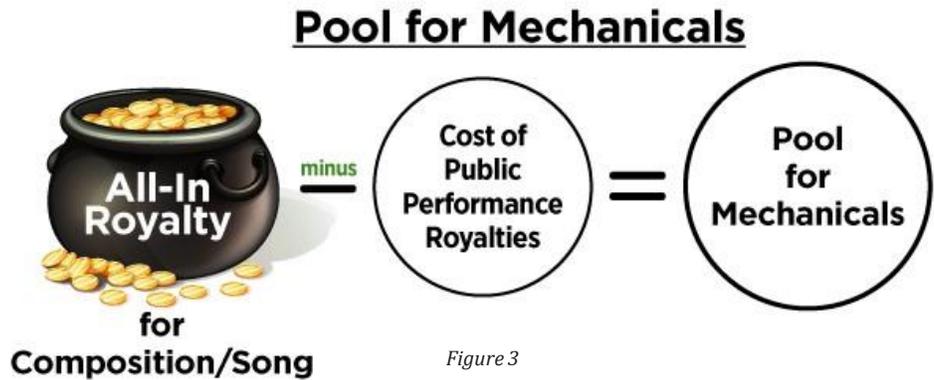
To determine how much money is for the right of Reproduction (the Mechanical), we now must run two new calculations. The calculation that has a higher dollar amount becomes the pool of money for the right of Reproduction (the Mechanical).

The two calculations are:

**• Calculation (A)**

Deduct the monthly cost of Public Performance royalties from the big pot of “All In” royalties.

(Figure 3)



As compared to:

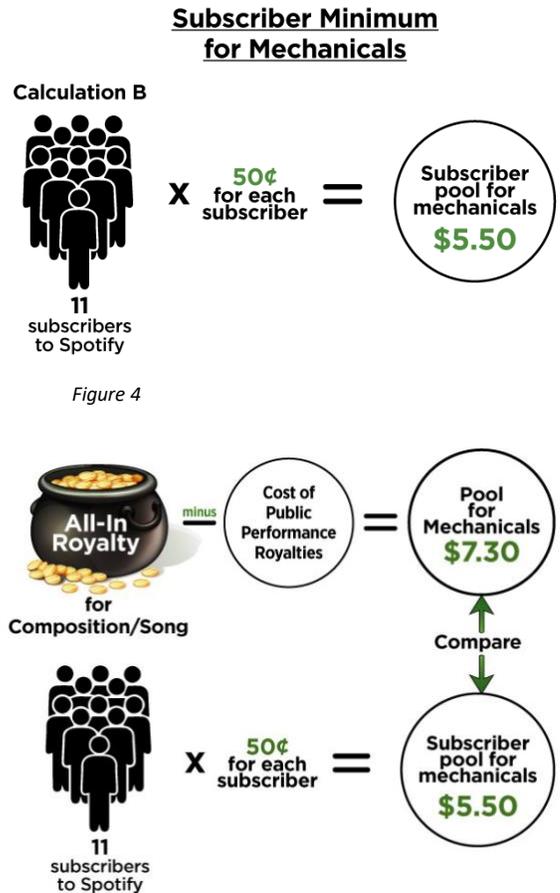
**• Calculation (B)**

Multiply the number of subscribers the DSP has by the CRB rate of \$0.50 for each subscriber (the “Subscriber Minimum”). (Figure 4)

In the example at the start of this section of the article, the results of these calculations were as follows:

- \$6 of the \$13.30 is for the right of Public Performance. \$13.30 – \$6.00 = \$7.30 left for the pool of Mechanical royalties
- DSP has 11 subscribers. It is \$0.50 per subscriber. 11 \* \$0.50 = \$5.50 for the subscriber minimum for the pool of Mechanical royalties

\$7.30 is greater than \$5.50, so the \$7.30 goes into the pool for the royalties for the Mechanical (Figure 5).



***To have the information for Step 2 the DSP must know the Performing Rights Organizations (PROs) rates and what they paid to the PROs. They have this information in their agreements with the PROs and also record of what they paid to the PROs.***

**STEP 3:**

**Determine What Percentage Of The Month's Streams Were For Each Self-Published Songwriter Or Publishing Administrator**

For this example, let's assume there were 10,000 total streams in DSP that were eligible for royalties for the right of Reproduction (the Mechanical) (Figure 6).

Next, let's assume that there were 300 streams of recordings of Compositions/Songs controlled by just one Self-Published Songwriter or Publishing Administrator (Figure 7).

To get the percentage of the month's streams that the one single Self-Published Songwriter or Publishing Administrator represents, the Statutory Rate in the Compulsory license requires DSP to divide the number of streams of recordings of Compositions/Songs controlled by the Self-Published Songwriter or Publishing Administrator (in this case 30) by the total streams in DSP (in this case 100,00).  
 $300/10,000 = .03$  or 3%

Therefore, the Self-Published Songwriter or Publishing Administrator represents 3% of the total streams in DSP in the month (Figure 8).

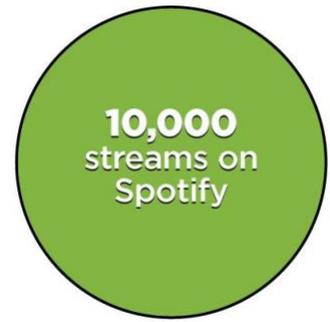


Figure 6

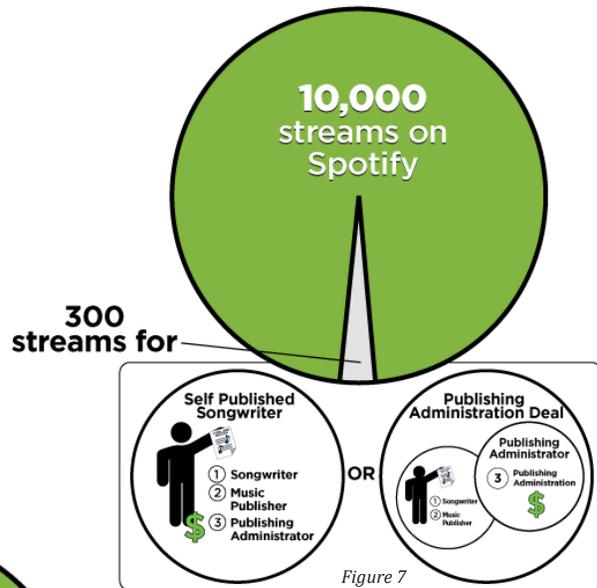


Figure 7

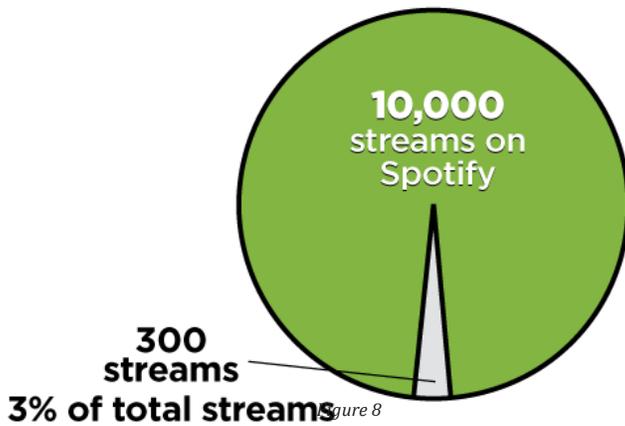


Figure 8

*To have the information for Step 3 the DSP must know the total number of streams of applicable sound recordings as well as how many times each recording streamed in the time period. This information can be found in either: the monthly sound recording statements they calculated and sent to their sound recording licensees, the output file they sent to the third-party entity for mechanicals and/or the output file they sent to the PRO so the PRO could distribute the payments to its members. There is also the possibility the Nielsen SoundScan has this data as it created "charts" off the stream data. With this data, the DSP can "map and match" the recording to the composition and the composition to the songwriter(s) again.*

*With the information for Steps 1 to Step 3 in hand, it allows the DSP to perform and complete the rest of the calculations as outlined below in Steps 4 to Step 6*

**STEP 4:**

**Determine How Much Money The Self-Published Songwriter Or Publishing Administrator Made From The Pool Of Royalties For The Right Of Reproduction (the Mechanical)**

To figure out how much money is owed to the Self-Published Songwriter or Publishing Administrator, DSP multiplies the Percentage Of Streams that the Self-published songwriter or Publishing Administrator represents by the total pool for royalties for the right of Reproduction (the Mechanical).

In this case the Self-published Songwriter or Publishing Administrator represents 3% of the total 10,000 streams.

\$7.30 went into the pool for the royalties for the right of Reproduction (the Mechanical).

$$3\% * \$7.30 = \$0.219$$

Therefore, this one single Self-Published Songwriter or Publishing Administrator generated a total of \$0.219 (a little less than twenty-two cents) in royalties for the right of Reproduction (the Mechanical) for the 300 streams of recordings of their Composition/ Songs in DSP in that one month. (Figure 9)



Figure 9

**STEP 5:**

**Determine The Per Stream Rate For The Right Of Reproduction (the Mechanical)**

To determine the per stream rate for the right of Reproduction (the Mechanical), DSP then divides the amount of money earned by the Self-Published Songwriter or Publishing Administrator by the number of streams of the recordings of their Compositions/Songs.

In this example:  $\$0.219 / 300 \text{ streams} = \$0.00073 \text{ per stream}$ .

**STEP 6:**

**DSP Provides A Royalty Statement And Payment**

When (if) the DSP pays the royalties for the right of Reproduction (the Mechanical), it must pay them to the Self-Published Songwriter, Publishing Administrator, or Reproduction Rights collection agency.

If DSP got the license for the Composition/Song using the Compulsory license, or via a license that follow the requirements of the Compulsory, then it must follow the rules of the Compulsory license.

One requirement states they must pay the royalties for the right of Reproduction (the Mechanical) on the 20th of the month for royalties earned from the previous month.

In addition, the Compulsory license requires DSP to provide certain information in each Mechanical royalty statement. This includes all the information and results of the formulas they are required to do as described above.

This information includes:

- How many subscribers the DSP had in the month for the specific DSP service
- How much revenue the DSP made in the month
- How much was earned in total by the Record Labels and Distributors for their Sound Recordings that streamed in the DSP for the month

- How much in total was paid by the DSP for the right of Public Performance for the month
- The total number of streams of all recordings that generated royalties in the DSP for the month

Once they lay this information out, they then show all the formulas and how they arrived at the per stream rate, which due to the compulsory, is the same for everyone for mechanicals. The following is an actual statement produced by HFA for Spotify which is not confidential and is sent to every music publisher in the world by Spotify to be compliant.

## Monthly Statement of Account

### Interactive Streaming Statutory Rate Calculation

**Service Offering:** S3: Standalone Portable Mixed Use

**Licensee:** SPOTIFY USA INC.

**Licensee Address:**

150 GREENWICH STREET - 62ND FL  
NEW YORK, NY 10007

**Period:** November 2019

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#### Inputs

Subscribers		18,424,350.00
Service Revenues	\$	160,925,339.75
Total Cost of Content	\$	83,400,885.60
Performance Royalties	\$	9,526,867.07
Plays (total plays adjusted for playing time)		19,047,324,777.90

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#### Step 1

All-in Royalty Pool, greater of:

a) 12.30% of Service Revenue \$ 19,793,816.79

**and**

b) 23.10% of Total Cost of Content \$ 19,265,604.57

All-In Royalty Pool equals \$ 19,793,816.79

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#### Step 2

Performance Royalties \$ 9,526,867.07

Separate Mechanical from Performance (less 9526867.07) \$ 10,266,949.72

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#### Step 3

Greater of Step 2 Result \$ 10,266,949.72

**and**

\$0.50/qualified subscriber/month \$ 9,212,175.00

Payable Mechanical Royalty Pool equals \$ 10,266,949.72

Effective Mechanical Rate per Play \$ **0.0005390232**

To request records of any promotional or free trial uses of the works, please contact:  
[publisherinfo@spotify.com](mailto:publisherinfo@spotify.com)

And here it is explained:

**Which Spotify service the statement is for**

**Monthly Statement of Account**

**Interactive Streaming Statutory Rate Calculation**

**Service Offering:** S3: Standalone Portable Mixed Use

**Licensee:** SPOTIFY USA INC.

**Licensee Address:** 150 GREENWICH STREET - 62ND FL  
NEW YORK, NY 10007

**Period:** November 2019 **Month the statement is for**

**The number of people subscribing to this Spotify product**

**How much Gross Revenue Spotify made in the month**

**The total Labels & Distributors earned for Sound Recordings in the month**

**Total earned in Public Performance royalties in the month**

**# of streams of Sound Recordings in the month**

**12.3% of Spotify's monthly Gross Revenue**

**23.10% of amount earned by labels/distributors for their recordings in the month**

**Amount earned in Public Performance royalties in the month**

**Amount left for Mechanicals after deducting Public Performance**

**Amount for Mechanicals at \$0.50 per subscriber**

**The higher of the \$0.50 per subscriber compared to the "All In" royalty pool in the month**

**Total pool of royalties for Mechanicals divided by the # of streams of Sound Recordings in the month**

Inputs			
Subscribers			18,424,350.00
Service Revenues	\$		160,925,339.75
Total Cost of Content	\$		83,400,885.60
Performance Royalties	\$		9,526,867.07
Plays (total plays adjusted for playing time)			19,047,324,777.90
<b>Step 1</b>			
All-in Royalty Pool, greater of:			
a) 12.30% of Service Revenue	\$		19,793,816.79
and			
b) 23.10% of Total Cost of Content	\$		19,265,604.57
All-In Royalty Pool equals	\$		19,793,816.79
<b>The higher of 12.3% of Spotify's monthly Gross Revenue vs. 23.10% of amount earned by labels/distributors for their recordings in the month</b>			
<b>Step 2</b>			
Performance Royalties	\$		9,526,867.07
Separate Mechanical from Performance (less 9526867.07)	\$		10,266,949.72
<b>Step 3</b>			
Greater of Step 2 Result	\$		10,266,949.72
and			
\$0.50/qualified subscriber/month	\$		9,212,175.00
Payable Mechanical Royalty Pool equals	\$		10,266,949.72
Effective Mechanical Rate per Play	\$		0.0005390232

To request records of any promotional or free trial uses of the works, please contact:  
[publisherinfo@spotify.com](mailto:publisherinfo@spotify.com)

It is highly unlikely that there are no record of these Monthly Statement of Account in existence as thousands of them were sent out each month to the world's publishers. The publishers themselves could remit copies of the Statement of Accounts back to the US Copyright office.

In addition to some of the DSPs stating they do not have the needed data to calculate the mechanicals, some have also indicated they are not certain of the exact dollar amount of the accrued but unpaid royalties that they are to turn over to the MLC. This is an unlikely scenario.

First, the DSPs have financial statements they produce each month, quarter and year. These statements include the information as to what their "costs" were for the music (sound recordings and compositions) that they streamed. It is highly unlikely these financial records have been destroyed.

Second, for the mechanicals, the DSPs made no differentiation between licensed compositions and unlicensed compositions. They calculated the monthly mechanicals as if everything was licensed under the statutory rate. Therefore, they calculated a total amount to pay out. This amount must appear in the DSPs financial statements as a cost. They then can identify how much they did pay out (as they did not pay all of it out) and then deduct the amount paid from the total generated. What is leftover is the accrued but unpaid pool.

Note also that the accrued but unpaid pool was to be carried forward from financial statement to financial statement as a liability, compounding along the way. In the event this was not done, it suggests the DSP booked other entities royalties as retained income and/or ignored state and/or federal escheatment and other financial requirements.

Finally note that the DSPs were required to provide an annual certified accounting to all the music publishers. This a different work flow and those documents may still exist.

The conclusions are

- 1) Either all or parts of the needed data are available to potentially recreate missing statements.
- 2) The world's music publishers were all sent Statement of Accounts that provide all the needed input data to recreate the statements. These can be remitted to the Copyright Office by music publishers
- 3) There should be record of the exact amount accrued but unpaid unless the music services booked the unpaid royalties as retained income and then used them for operational costs.
- 4) If the DSPs did not have the needed data to comply with the MMA, but endorsed it and worked to get it passed into law, they should not be given a "get out of jail free card" and allowed to not follow the law they helped pass.
- 5) The annual certified statements sent to music publishers contain a recap of the needed information and may be recoverable as well.

Thank You

Jeff Price